

## **EXHIBIT 7**

Kenneth W Fisher PhD - Confidential  
Provence, Tiffany N v. United States of America, et al

June 10, 2022

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF SOUTH CAROLINA  
3 CHARLESTON DIVISION IN ADMIRALTY

4 TIFFANY N. PROVENCE, AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE OF JUAN  
5 ANTONIO VILLALOBOS HERNANDEZ,

6 Plaintiff,

7 vs. CASE No. 2:21-cv-965-RMG5

8 UNITED STATES OF AMERICA, CROWLEY  
9 MARITIME CORPORATION, CROWLEY GOVERNMENT  
SERVICES, INC., DETYENS SHIPYARD, INC.  
AND HIGHTRAK STAFFING, INC. D/B/A HITRAK  
10 STAFFING, INC.,

11 Defendants.

12 CONFIDENTIAL TRANSCRIPT SUBJECT TO ORDER

13 DEPOSITION OF: KENNETH W. FISHER, PH.D.  
(Appearing by VTC)  
14 DATE: June 10, 2022  
15 TIME: 10:03 a.m.  
16 LOCATION: Boston, MA  
17 TAKEN BY: Counsel for the Defendants  
18 REPORTED BY: Susan M. Valsecchi, Registered  
Professional Reporter, CRR  
(Appearing by VTC)

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21  
22  
23  
24  
25

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1 authorities.

2 So this is not in --

3 Q. Okay.

4 A. This commercial marine practice isn't  
5 as an alternative. It's on top of what's required  
6 by the contract and by regulations.

7 Q. Okay. And let me ask you, Dr. Fisher,  
8 when the lifeboats are in their cradles, and, you  
9 know, in the davit arms, as if they were normally  
10 ready for operation, would there be two methods of  
11 restraint on the davit arm?

12 A. No, there's one, because they slack  
13 off, the fall -- and the weight is supported by the  
14 stopper bar. The fall is not in tension, or very  
15 minimal tension, if at all, when the vessel is in  
16 operation. Okay? And then the fall is tightened  
17 up and the stopper bars are released if you need to  
18 launch the boats.

19 Q. Okay. So when the lifeboats are in  
20 their operational status, or ready for deployment,  
21 the only method of restraint is the stopper bar; is  
22 that correct?

23 A. No, the stopper bar is holding it in  
24 position; but if the stopper bar failed, then the  
25 fall would be subject to a jerking force, but

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1 probably restrain it.

2 Q. Okay. In other words, a little bit of  
3 slack might come out of the fall, a couple feet,  
4 but then the wire ropes would restrain the boat; is  
5 that right?

6 A. I believe that's the expectation.

7 Q. And in that sense, would you agree with  
8 me that, while the boats are in operational  
9 condition, there are two methods of restraint?

10 A. No.

11 Q. Okay. What would the falls be  
12 considered, in your opinion, if they're not a  
13 method of restraint?

14 A. They're used to lower the lifeboat.  
15 These stopper bars, they work. They work. They're  
16 adequate. They're a hundred percent. That's  
17 why --

18 Q. Okay, very good.

19 A. That's why the launching requirements,  
20 say you've got -- you know, they've got all of  
21 these procedures that have to be followed to launch  
22 a lifeboat. One of them is to tighten up the fall  
23 and then release the stopper bar. So, you know, it  
24 works.

25 Q. You would agree with me, then, that the

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1 stopper bars are 100 percent effective in  
2 preventing the davit arms from being deployed?

3 A. Yes, but I'm also worrying about what  
4 is the one hundred percent means effective of  
5 making sure there's no errant electrical currents?

6 Q. Well, Dr. Fisher, you have, during your  
7 deposition, used the term 100 percent effective on  
8 numerous occasions, and I think I understand you to  
9 be saying the stopper bars would be 100 percent  
10 effective, and your earlier testimony was that the  
11 single method of restraint used by Detyens shipyard  
12 was also 100 percent effective; is that correct?

13 A. Yes.

14 Q. So there's two different methods that  
15 are both 100 percent effective in your opinion,  
16 correct?

17 A. When you're either in repair or you're  
18 in operation, you use a different method in  
19 different circumstances.

20 Q. And because both methods are  
21 100 percent effective, do I understand your opinion  
22 to be that only one of them is necessary to prevent  
23 davit arms from rolling down the trackway?

24 A. Right, in the different situations.

25 When the ship is being repaired, the stopper bars

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1 are inappropriate. When the ship is at sea, the  
2 stopper bars are appropriate. I don't  
3 understand -- you know, different methods at  
4 different situations.

5 Q. Let me make sure I heard your testimony  
6 there. Did you just say that when the ship is  
7 being repaired, the stopper bars are not  
8 appropriate?

9 A. The stopper bars are not necessary.

10 Q. Would you clarify that for me.

11 A. Earlier we spoke about the fact that  
12 the stopper bars interfere with the accomplishment  
13 of the work.

14 Q. That was all the testimony you gave  
15 about the painting and removing them and so forth?

16 A. Yes.

17 Q. But would you agree with me that the  
18 stopper bars, there's no reason you couldn't use  
19 them to restrain the davit arms in the exact same  
20 success ratio or with a hundred percent success;  
21 you could always use the stopper bars, couldn't  
22 you?

23 MR. GILSENAN: Objection.

24 THE WITNESS: Except, of course, when  
25 you had to, you know, do the work in the

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1                   area where the stopper bars were.

2 BY MR. YOUNG:

3                   Q. Okay, except for the time period that  
4 you're actually repairing or, you know, descaling  
5 and repainting and so forth around the stopper bars  
6 right?

7                   A. Sure, sure.

8                   Q. And then let me ask you, Dr. Fisher --

9                   A. I can visualize multiple other  
10 mechanisms that you could use as well. You could  
11 keep the --

12                  Q. Sure.

13                  A. -- permanently affixed -- keep the  
14 crane attached to the davit arm while the cable is  
15 also in place. There are other methods available  
16 as well, but it's a matter of why do you need the  
17 redundancy when you've got a hundred percent  
18 proven -- you know, proven safe mechanism.

19                  Q. If you had a redundancy in this case  
20 involving the stopper bar or something similar to  
21 it that mechanically blocked the davit arm, would  
22 you agree that Mr. Hernandez would not have been  
23 killed?

24                  MR. GILSENAN: Objection.

25                  THE WITNESS: Could you say that again,

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1 all?

2 A. I don't understand the last part of  
3 that question. Does it apply to the lifeboat  
4 davits? When the vessel is in operation, it  
5 certainly does.

6 Q. The lifeboat davits are a gravity  
7 system, correct?

8 A. Yes, they are.

9 Q. And Crowley has a lockout/tagout  
10 procedure that applies to gravity systems in those  
11 circumstances that the lockout/tagout procedure  
12 applies. Would you agree with that?

13 A. When this procedure applies, yes.

14 Q. And it says here under Exhibit  
15 Number 6, "The Master shall ensure adherence to  
16 this procedure."

17 Do you see that, under the  
18 Responsibility section?

19 A. Section 6?

20 Q. Exhibit, 6 which is this lockout/tagout  
21 procedure from Crowley --

22 A. Which paragraph number? Oh,  
23 Paragraph 3.1?

24 Q. Yes, sir, Responsibility.

25 A. Yes, I see that.

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1 that's in the SMS. This is a very narrow area  
2 that -- this and the next paragraph alone,  
3 4.74.35 -- are the very narrow areas where the SMS  
4 creates a duty or a -- you know, a duty for the  
5 chief engineer to participate in some shipyard and  
6 oversight of shipyard work.

7 Q. Okay. And that's your opinion. But if  
8 somebody testified the SMS never applies while the  
9 ship is in the shipyard, that wouldn't be accurate;  
10 would it?

11 MR. GILSENAN: Objection.

12 THE WITNESS: Pardon me, I just dropped  
13 my report.

14 Yes and no. It does not mean the  
15 entire SMS applies. There is just these two  
16 sentences out of the entire SMS, which is,  
17 you know, many, many pages. This is two  
18 sentences out of the SMS which may apply  
19 while the ship is in the shipyard.

20 BY MR. YOUNG:

21 Q. Well, I guess I'll try to drill down on  
22 that a little bit.

23 You seem to want to qualify this to say  
24 Exhibit Number 7 may apply while the ship is in the  
25 shipyard --

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1           A. Bingo. That's exactly what the wires  
2 or cables did. They locked it out.

3           Q. So now that you've had a chance to look  
4 at Exhibit Number 9, is it your testimony that  
5 Detyens complied with this lockout/tags-plus  
6 program, as reflected in 5.16, with the wire rope  
7 restraint that it chose to use?

8           A. Yes, chains, wedges, the equivalent of  
9 a chain, right, hardware used for isolating --

10          Q. They didn't use --

11           THE COURT REPORTER: Hold on.

12           THE WITNESS: Hardware used for  
13 isolating, blocking, or securing equipment  
14 or systems. Right. Done.

15 BY MR. YOUNG:

16          Q. Very good.

17           Okay. So now that you've had a chance  
18 to look at Exhibit Number 9, is it your testimony  
19 that Detyens complied fully with the lockout/tagout  
20 procedure for the restraint of this davit arm?

21          A. Under their own interpretation of their  
22 own rules, or their own procedures, the answer is  
23 yes.

24          Q. Okay. And then Exhibit Number 9,  
25 turning to the second page and looking at Section

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1       earlier as to who was coordinating all the  
2       lockout/tagouts, and it says here, under  
3       1915.89(c)(7)(iii), "The employer shall designate  
4       the lockout/tags-plus coordinator."

5           Q. And you recall, Dr. Fisher, we went  
6       through some testimony about whether -- employer  
7       and what it meant and whether it's a defined term  
8       and so forth. We've already covered that, right?

9           A. But that also affects what we were  
10      talking about in the previous -- one of the  
11      previous exhibits, where it says that the ship's  
12      crew or the port engineer shall have the  
13      responsibility and so forth. And I was saying  
14      that's a joint responsibility. That means you need  
15      permission of both before releasing the energy and  
16      so forth. So this helps build that and say the  
17      coordinator has to be an employee of the  
18      contractor.

19           Q. Like we went over earlier, employer is  
20      a defined term under Section 1915 and so is  
21      employee, correct?

22           A. Right. So we're okay here. So, yes,  
23      this applies.

24           Q. Perfect.

25           Exhibit Number 14 applies, right?

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1 that ungrounded welding machine that you  
2 referenced, you learned that from the OSHA  
3 inspector's report, right?

4 A. Yes.

5 Q. However, nothing in that report says  
6 that that ungrounded welding machine caused any  
7 electrical arc or not the one in this --

8 A. No one -- no one saw the arc, so no one  
9 can say it caused an arc. No one saw the failure  
10 occur.

11 Q. And then shifting gears to the contract  
12 between Detyens and Crowley; and this isn't an  
13 exhibit you need to read or anything. This is  
14 just based on your review in writing your report.

15 The contract called for Detyens to use  
16 the best commercial marine practices in their  
17 repair work, right?

18 A. Right.

19 Q. And is it your opinion that the way  
20 that Detyens restrained the davit arm using the  
21 3/8ths-inch wire rope and Crosby clamps was  
22 recognized as best commercial marine practices at  
23 the time?

24 A. I don't know who has to recognize it.  
25 I would characterize it as being good marine